

Joseph R. Re (State Bar No. 134,479)
joseph.re@kmob.com
Stephen C. Jensen (State Bar No. 149,894)
stephen.jensen@kmob.com
Jarom D. Kesler (State Bar No. 239,136)
jarom.kesler@kmob.com
KNOBBE, MARTENS, OLSON & BEAR, LLP
2040 Main Street
Fourteenth Floor
Irvine, CA 92614
Phone: (949) 760-0404
Facsimile: (949) 760-9502

Attorneys for Plaintiff
NATUS MEDICAL INCORPORATED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

NATUS MEDICAL INCORPORATED, a
Delaware corporation and BAYCREST CENTRE
FOR GERIATRIC CARE, an Ontario, Canada
corporation

Plaintiff,

v.

INTELLIGENT HEARING SYSTEMS, a Florida
corporation,

Defendant.

) Civil Action No. 10-cv-707 HRL

) **FIRST AMENDED COMPLAINT**
) **FOR PATENT INFRINGEMENT**
) **OF U.S. PATENT NOS. 5,601,091;**
) **5,916,174; 6,602,202; 6,832,663;**
) **7,014,613; and 7,399,282**

) **DEMAND FOR JURY TRIAL**

1 Plaintiffs Natus Medical Incorporated, a Delaware corporation (“Natus”) and Baycrest
2 Centre for Geriatric Care (“BCGC”), an Ontario, CA corporation hereby complain of
3 Defendant Intelligent Hearing Systems (“IHS”), a Florida corporation and allege as follows:

4 **JURISDICTION AND VENUE**

5 1. This Complaint states causes of action for patent infringement arising under
6 the patent laws of the United States, 35 U.S.C. § 100 *et seq.*, and, more particularly, 35
7 U.S.C. §§ 271 and 281. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331
8 and 1338(a).

9 2. Upon information and belief, IHS conducts business throughout the United
10 States, including in this judicial district, and has committed the acts complained of in this
11 judicial district and elsewhere.

12 3. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and (c) and
13 1400(b).

14 **PARTIES**

15 4. Natus is a Delaware corporation having its principal place of business at 1501
16 Industrial Road, San Carlos, CA.

17 5. BCGC is an Ontario, Canada corporation having its principal place of business
18 at 3560 Bathurst Street, Toronto, Ontario CA.

19 6. Upon information and belief, IHS is a Florida corporation having its principal
20 place of business at 6860 Southwest 81st Street, Miami, FL.

21 **ALLEGATIONS FOR ALL CLAIMS OF RELIEF**

22 7. On February 11, 1997, the United States Patent and Trademark Office duly
23 and lawfully issued U.S. Patent No. 5,601,091 (“the ’091 patent”), titled “Audiometric
24 Apparatus and Associated Screening Method.” Natus owns the ’091 patent by assignment. A
25 copy of the ’091 patent is attached hereto as Exhibit A.

26 8. On June 29, 1999, the United States Patent and Trademark Office duly and
27 lawfully issued U.S. Patent No. 5,916,174 (“the ’174 patent”), titled “Audiometric Apparatus
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1 and Association Screening Method.” Natus owns the ’174 patent by assignment. A copy of
2 the ’174 patent is attached hereto as Exhibit B.

3 9. On August 5, 2003, the United States Patent and Trademark Office duly and
4 lawfully issued U.S. Patent No. 6,602,202 (“the ’202 patent”), titled “System and Methods for
5 Objective Evaluation of hearing Using Auditory Steady-State Responses.” BCGC owns the
6 ’202 patent by assignment. Natus is the exclusive licensee of the ’202 patent. A copy of the
7 ’202 patent is attached hereto as Exhibit C.

8 10. On December 21, 2004, the United States Patent and Trademark Office duly
9 and lawfully issued U.S. Patent No. 6,832,663 (“the ’663 patent”), titled “Ear Coupler.” Natus
10 owns the ’663 patent by assignment. A copy of the ’663 patent is attached hereto as
11 Exhibit D.

12 11. On March 21, 2006, the United States Patent and Trademark Office duly and
13 lawfully issued U.S. Patent No. 7,014,613 (“the ’613 patent”), titled “System and Methods for
14 Objective Evaluation of hearing Using Auditory Steady-State Responses.” BCGC owns the
15 ’613 patent by assignment. Natus is the exclusive licensee of the ’613 patent. A copy of the
16 ’613 patent is attached hereto as Exhibit E.

17 12. On July 15, 2008, the United States Patent and Trademark Office duly and
18 lawfully issued U.S. Patent No. 7,399,282 (“the ’282 patent”), titled “System and Methods for
19 Objective Evaluation of hearing Using Auditory Steady-State Responses.” BCGC owns the
20 ’282 patent by assignment. Natus is the exclusive licensee of the ’282 patent. A copy of the
21 ’282 patent is attached hereto as Exhibit F.

22 13. Natus has marked its competing product, the Flexicoupler, which it has
23 manufactured and sold under the ’663 patent with the number of the ’663 patent in
24 accordance with 35 U.S.C. § 287(a).

25 **CLAIM 1: CLAIM FOR INFRINGEMENT OF**
26 **U.S. PATENT NO. 5,601,091 BY IHS**

27 14. Natus repeats, realleges and incorporates by reference the allegations set forth
28 in paragraphs 1–13 of this Complaint.

1 15. This is a claim for patent infringement arising under the patent laws of the
2 United States, Title 35 of the United States Code.

3 16. Without authority, IHS, through its agents, employees and servants, has
4 manufactured, used, promoted, offered for sale, and/or sold within the United States, and/or
5 imported into the United States products covered by one or more claims of the '091 patent, has
6 actively induced others to do the same and/or has contributed to others' performance of the
7 same. IHS has thereby infringed, actively induced others to infringe and/or contributed to
8 others' infringement of one or more claims of the '091 patent in violation of 35 U.S.C. § 271,
9 including 35 U.S.C. §§ 271(a), (b) and/or (c). This infringement is currently ongoing. The
10 products relating to IHS's infringement includes the SmartScreener Plus-2 product.

11 17. Upon information and belief, IHS has derived, received, and will continue to
12 derive and receive gains, profits and advantages from the aforesaid acts of infringement of the
13 '091 patent in an amount that is not presently known to Natus. Due to the infringement of the
14 '091 patent by IHS, Natus has been damaged and is entitled to monetary relief in an amount to
15 be determined at trial.

16 18. Unless IHS is enjoined from infringing the '091 patent, Natus will continue to
17 suffer irreparable injury for which it has no adequate remedy at law.

18 **CLAIM 2: CLAIM FOR INFRINGEMENT OF**
19 **U.S. PATENT NO. 5,916,174 BY IHS**

20 19. Natus repeats, realleges and incorporates by reference the allegations set forth
21 in paragraphs 1–18 of this Complaint.

22 20. This is a claim for patent infringement arising under the patent laws of the
23 United States, Title 35 of the United States Code.

24 21. Without authority, IHS, through its agents, employees and servants, has
25 manufactured, used, promoted, offered for sale, and/or sold within the United States, and/or
26 imported into the United States products covered by one or more claims of the '174 patent, has
27 actively induced others to do the same and/or has contributed to others' performance of the
28 same. IHS has thereby infringed, actively induced others to infringe and/or contributed to

1 others' infringement of one or more claims of the '174 patent in violation of 35 U.S.C. § 271,
2 including 35 U.S.C. §§ 271(a), (b) and/or (c). This infringement is currently ongoing. The
3 products relating to IHS's infringement includes the SmartScreener Plus-2 product.

4 22. Upon information and belief, IHS has derived, received, and will continue to
5 derive and receive gains, profits and advantages from the aforesaid acts of infringement of the
6 '174 patent in an amount that is not presently known to Natus. Due to the infringement of the
7 '174 patent by IHS, Natus has been damaged and is entitled to monetary relief in an amount to
8 be determined at trial.

9 23. Unless IHS is enjoined from infringing the '174 patent, Natus will continue to
10 suffer irreparable injury for which it has no adequate remedy at law.

11 **CLAIM 3: CLAIM FOR INFRINGEMENT OF**
12 **U.S. PATENT NO. 6,602,202 BY IHS**

13 24. Natus and BCGC repeat, reallege and incorporate by reference the allegations
14 set forth in paragraphs 1–23 of this Complaint.

15 25. This is a claim for patent infringement arising under the patent laws of the
16 United States, Title 35 of the United States Code.

17 26. Without authority, IHS, through its agents, employees and servants, has
18 manufactured, used, promoted, offered for sale, and/or sold within the United States, and/or
19 imported into the United States products covered by one or more claims of the '202 patent, has
20 actively induced others to do the same and/or has contributed to others' performance of the
21 same. IHS has thereby infringed, actively induced others to infringe and/or contributed to
22 others' infringement of one or more claims of the '202 patent in violation of 35 U.S.C. § 271,
23 including 35 U.S.C. §§ 271(a), (b) and/or (c). This infringement is currently ongoing. The
24 products relating to IHS's infringement includes the SmartScreener Plus-2 and SmartEP-ASSR
25 products.

26 27. Upon information and belief, IHS has derived, received, and will continue to
27 derive and receive gains, profits and advantages from the aforesaid acts of infringement of the
28 '202 patent in an amount that is not presently known to Natus and BCGC. Due to the

1 infringement of the '202 patent by IHS, Natus and BCGC have been damaged and are entitled to
2 monetary relief in an amount to be determined at trial.

3 28. Unless IHS is enjoined from infringing the '202 patent, Natus and BCGC will
4 continue to suffer irreparable injury for which it has no adequate remedy at law.

5 **CLAIM 4: CLAIM FOR INFRINGEMENT OF**
6 **U.S. PATENT NO. 6,832,663 BY IHS**

7 29. Natus repeats, realleges and incorporates by reference the allegations set forth
8 in paragraphs 1–28 of this Complaint.

9 30. This is a claim for patent infringement arising under the patent laws of the
10 United States, Title 35 of the United States Code.

11 31. Without authority, IHS, through its agents, employees and servants, has
12 manufactured, used, promoted, offered for sale, and/or sold within the United States, and/or
13 imported into the United States products covered by one or more claims of the '663 patent, has
14 actively induced others to do the same and/or has contributed to others' performance of the
15 same. IHS has thereby infringed, actively induced others to infringe and/or contributed to
16 others' infringement of one or more claims of the '663 patent in violation of 35 U.S.C. § 271,
17 including 35 U.S.C. §§ 271(a), (b) and/or (c). This infringement is currently ongoing. The
18 products relating to IHS's infringement includes the Earhug product.

19 32. Upon information and belief, IHS has derived, received, and will continue to
20 derive and receive gains, profits and advantages from the aforesaid acts of infringement of the
21 '663 patent in an amount that is not presently known to Natus. Due to the infringement of the
22 '663 patent by IHS, Natus has been damaged and is entitled to monetary relief in an amount to
23 be determined at trial.

24 33. Unless IHS is enjoined from infringing the '663 patent, Natus will continue to
25 suffer irreparable injury for which it has no adequate remedy at law.

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CLAIM 5: CLAIM FOR INFRINGEMENT OF
U.S. PATENT NO. 7,014,613 BY IHS

34. Natus and BCGC repeat, reallege and incorporate by reference the allegations set forth in paragraphs 1–33 of this Complaint.

35. This is a claim for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

36. Without authority, IHS, through its agents, employees and servants, has manufactured, used, promoted, offered for sale, and/or sold within the United States, and/or imported into the United States products covered by one or more claims of the '613 patent, has actively induced others to do the same and/or has contributed to others' performance of the same. IHS has thereby infringed, actively induced others to infringe and/or contributed to others' infringement of one or more claims of the '613 patent in violation of 35 U.S.C. § 271, including 35 U.S.C. §§ 271(a), (b) and/or (c). This infringement is currently ongoing. The products relating to IHS's infringement includes the SmartScreener Plus-2 and SmartEP-ASSR products.

37. Upon information and belief, IHS has derived, received, and will continue to derive and receive gains, profits and advantages from the aforesaid acts of infringement of the '613 patent in an amount that is not presently known to Natus and BCGC. Due to the infringement of the '613 patent by IHS, Natus and BCGC have been damaged and are entitled to monetary relief in an amount to be determined at trial.

38. Unless IHS is enjoined from infringing the '613 patent, Natus and BCGC will continue to suffer irreparable injury for which it has no adequate remedy at law.

CLAIM 6: CLAIM FOR INFRINGEMENT OF
U.S. PATENT NO. 7,399,282 BY IHS

39. Natus and BCGC repeat, reallege and incorporate by reference the allegations set forth in paragraphs 1–38 of this Complaint.

40. This is a claim for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

1 41. Without authority, IHS, through its agents, employees and servants, has
2 manufactured, used, promoted, offered for sale, and/or sold within the United States, and/or
3 imported into the United States products covered by one or more claims of the '282 patent, has
4 actively induced others to do the same and/or has contributed to others' performance of the
5 same. IHS has thereby infringed, actively induced others to infringe and/or contributed to
6 others' infringement of one or more claims of the '282 patent in violation of 35 U.S.C. § 271,
7 including 35 U.S.C. §§ 271(a), (b) and/or (c). This infringement is currently ongoing. The
8 products relating to IHS's infringement includes the SmartScreener Plus-2 or SmartEP-ASSR
9 products.

10 42. Upon information and belief, IHS has derived, received, and will continue to
11 derive and receive gains, profits and advantages from the aforesaid acts of infringement of the
12 '282 patent in an amount that is not presently known to Natus and BCGC. Due to the
13 infringement of the '282 patent by IHS, Natus and BCGC have been damaged and are entitled to
14 monetary relief in an amount to be determined at trial.

15 43. Unless IHS is enjoined from infringing the '282 patent, Natus and BCGC will
16 continue to suffer irreparable injury for which it has no adequate remedy at law.

17 **PRAYER FOR RELIEF**

18 Natus and BCGC respectfully pray for:

19 A. An order adjudging IHS to have infringed each of the '091, '174, '202, '663,
20 '613 and '282 patents;

21 B. A permanent injunction enjoining IHS, as well as its officers, agents, servants,
22 employees, and attorneys and those persons in active concert or participation with IHS, from
23 infringing the '091, '174, '202, '663, '613 and '282 patents;

24 C. An accounting of all gains, profits, and advantages derived by IHS's
25 infringement of the '091, '174 and '663 patents and an award of damages adequate to
26 compensate Natus for IHS's infringement of the '091, '174, and '663 patents;

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1 D. An accounting of all gains, profits, and advantages derived by IHS's
2 infringement of the '202, '613 and '282 patents and an award of damages adequate to
3 compensate Natus and BCGC for IHS's infringement of the '202, '613 and '282 patents;

4 E. An award of pre-judgment and post-judgment interest and costs of this action
5 against IHS;

6 F. An award to Natus and BCGC of its attorneys' fees incurred in connection with
7 this action; and

8 G. Such other and further relief as the Court deems just and proper.

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10 Respectfully submitted,

11 KNOBBE, MARTENS, OLSON & BEAR, LLP
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14 Dated: April 2, 2010

By: s/Stephen C. Jensen

Stephen C. Jensen
Joseph R. Re
Jarom D. Kesler

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16 Attorneys for Plaintiff
17 NATUS MEDICAL INCORPORATED
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DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs Natus Medical, Inc. and Baycrest Centre For Geriatric Care hereby demand a trial by jury on all issues so triable.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: April 2, 2010

By: s/Stephen C. Jensen

Stephen C. Jensen

Joseph R. Re

Jarom D. Kesler

Attorneys for Plaintiff

NATUS MEDICAL INCORPORATED

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